



W.P.(MD) No.6949 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.6949 of 2024

and

W.M.P.(MD) No.6469 of 2024

M/s.New India Assurance Company Limited,
Jerome Building,
2nd Floor, Kottai Station Road,
Trichy-2.

... Petitioner

Vs.

1.The Joint Commissioner of Labour/Employees'
Compensation Commissioner,
Combined Labour Department,
Office Compas, Second Floor,
Sengulam Colony, Mannarpuram,
Trichirappalli-620 020.

2.Manivel

3.C.Gunasekaran

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 16.10.2023 passed in I.A.No. 84 of 2023 in



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E.C.No. 83 of 2022 by the 1st respondent and quash the same consequentially allow I.A.No. 84 of 2023 in E.C.No. 83 of 2022.

For Petitioner	:	Mr.V.Sakthivel
For R1	:	Mr.S.Shanmugavel Additional Government Pleader
For R2	:	No appearance
Respondent-3	:	Refused to receive notice

ORDER

In spite of service of notice on Respondent No.2, no appearance is entered and Respondent No.3 refused to receive the notice. In the circumstances, this Court has no option except to dispose of the matter basing on the material available on record.

2. This is a case where Respondent No.2 herein made a claim against Respondent No.3 and the petitioner herein before Respondent No.1 under the provisions of the Workmen's Compensation Act, 1923 for the injury suffered by him. In the said proceedings, the petitioner herein, by way of



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filing a counter affidavit, brought to the notice of Respondent No.1 that the owner of the third party vehicle is liable for the injury caused to Respondent No.2 and therefore, the owner of the said third party vehicle viz., the lorry bearing Registration No.TN47 BX 3721 and the insurer of the said vehicle are also liable. However, in spite of the same, Respondent No.1 failed to take any action under Rule 39 of the Workmen's Compensation Rules, 1924 and issue notice to the owner of the said third party lorry and its insurer. Under those circumstances, the petitioner herein filed an application to implead the owner of the said lorry and the insurer as parties to the proceedings pending before Respondent No.1. The said application is now rejected by passing the impugned order stating that they are not necessary parties to the proceedings on the objections raised by Respondent No.2.

3. This Court carefully considered the matter and the arguments advanced on behalf of the petitioner.

4. Rule 39(1) of the Workmen's Compensation Rules reads as under:



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“39.Procedure where indemnity claimed under section 12(2).—(1) Where the opposite party claims that if compensation is recovered against him he will be entitled under sub-section (2) of section 12, to be indemnified by a person not being a party to the case, he shall, when first called upon answer the application, present a notice of such claim to the Commissioner accompanied by the prescribed fee, and the Commissioner shall thereupon issue notice to such person in Form J.”

5. From the above Rule, it is evident that as and when it is brought to his notice by any opposite party in a claim about his entitlement for indemnification, a duty is cast upon Respondent No.1 to issue notice to third party. Under sub-Section (2) of Section 12 of the Workmen's Compensation Act, if such a person who is liable to indemnify is not a party to the claim proceedings, the Commissioner shall put such party on notice. As already noted above, the petitioner herein has already taken such a stand in the counter affidavit filed in the claim petition, but the requirement of sub-Rule (1) of Rule 39 has not been complied with by Respondent No.1. Therefore, the petitioner has filed an application to implead the owner of the third party



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vehicle as well as its insurer. If the said application is allowed, the same would amount to compliance with sub-Rule (1) of Rule 39 of the Workmen's Compensation Rules. Therefore, in all probabilities, Respondent No.1 ought to have allowed the said application to enable the conclusion of the proceedings at an early date. But Respondent No.1 erroneously rejected the said application resulting in further delay of the proceedings before him. Accordingly, the impugned order is set aside, and then I.A.No.84 of 2023 in E.C.No.83 of 2022 shall stand allowed and Respondent No.1 is at liberty to proceed with the matter by duly putting the newly impleaded respondents on notice in accordance with law.

6. In the result, this Writ Petition is allowed. There shall be no order as to costs.

17.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

ABR

To

The Joint Commissioner of Labour/Employees'
Compensation Commissioner,
Combined Labour Department,
Office Compas, Second Floor,
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